



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP21/01

Tuesday, 5 January 2021

Beston Global Food Company Limited – Panel Receives Application

The Panel has received an application from Kunteng Pte Ltd in relation to the affairs of Beston Global Food Company Limited. The application concerns an entitlement offer announced by Beston on 17 December 2020.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

On 26 October 2020, Beston issued its notice of annual general meeting (**AGM**) to be held on 26 November 2020 which included a contingent spill resolution if Beston received a ‘second strike’ against its remuneration report at the AGM.

On 26 November 2020, the Chairman of Beston adjourned the AGM citing concerns about “*possible voting associations in the proxy votes*” and needing time to obtain legal advice on the matter.

On 4 December 2020, Beston announced that the AGM would be reconvened on 29 January 2021 to allow time for the authorities to investigate the matters of concern and “*taking into account the upcoming festive and holiday season*” ensure shareholders can participate in the meeting.

On 17 December 2020, Beston announced a non-renounceable pro rata entitlement offer to eligible shareholders of 1 new share for every 2.5 existing shares at an issue price of \$0.065 per new share to raise up to \$15.6 million. The offer is partially underwritten by two underwriters to the extent of \$7.25 million (which amount may be increased by mutual agreement between Beston and the underwriters).

The entitlement offer is scheduled to close on 18 January 2021 with new shares to be issued on 25 January 2021 (two business days prior to the date on which new or amended proxies must be received by Beston in relation to the adjourned AGM).

The applicant submits that the entitlement offer is unacceptable because (among other things):

- (a) the structure and timing of the offer is intended to, and operates to, maximize the number of securities to be issued to the underwriters or otherwise issuable at the discretion of the directors of Beston pursuant to a top up offer (for shareholders who accept their entitlement in full) or in respect of the discretion to place shortfall securities and there are inadequate dispersal strategies in place to mitigate the control effects of the offer
- (b) properly construed, the offer is an artifice to facilitate Beston issuing a significant number of voting shares in advance of the adjourned AGM in an attempt to change the likely outcome of the votes on key resolutions (including the contingent spill resolution) had voting proceeded at the AGM and is being undertaken for an improper purpose and
- (c) Beston has failed to provide adequate disclosure in relation to the offer.

The applicant submits that the effect of the circumstances is that the likely acquisition of control over shares in Beston will not take place in an efficient, competitive and informed market and is otherwise unacceptable having regard to the purposes of Chapter 6 of the Corporations Act.

The applicant seeks interim orders that the entitlement offer not proceed prior to the later of the date of the reconvened AGM and the date on which final orders are made by the Panel.

The applicant seeks final orders including that Beston provide supplementary disclosure in relation to the entitlement offer, that the offer not proceed until voting at the reconvened AGM has been completed and that Beston's directors be restrained from issuing shares under the top up offer and from placing any shortfall shares.

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